

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KRISTIN B.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 2:19-CV-1335 – DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant’s denial of Plaintiff’s application for supplemental security income (“SSI”). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge (“ALJ”) erred when she improperly evaluated Dr. Ellen Walker’s opinion. The ALJ’s error is therefore harmful, and this matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration (“Commissioner”) for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

2 On March 30, 2016, Plaintiff filed an application for SSI, alleging disability as of May
3 23, 2015. *See* Dkt. 8, Administrative Record (“AR”) 13. The application was denied upon initial
4 administrative review and on reconsideration. *See* AR 13. A hearing was held before ALJ
5 Stephanie Martz on April 3, 2018. *See* AR 13. In a decision dated August 21, 2018, the ALJ
6 determined Plaintiff to be not disabled. *See* AR 24. Plaintiff’s request for review of the ALJ’s
7 decision was denied by the Appeals Council, making the ALJ’s decision the final decision of the
8 Commissioner. *See* AR 12; 20 C.F.R. § 404.981, § 416.1481.

9 In the Opening Brief, Plaintiff maintains the ALJ erred by improperly: (1) discounting the
10 medical opinion evidence; (2) discounting Plaintiff's testimony and the lay witness testimony;
11 and (3) determining Plaintiff could perform past relevant work at Step Five. Dkt. 10.

STANDARD OF REVIEW

13 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
14 social security benefits if the ALJ's findings are based on legal error or not supported by
15 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
16 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

I. Whether the ALJ properly considered the medical opinion evidence.

19 Plaintiff asserts the ALJ erred by improperly discounting Dr. Walker's opinion. Dkt. 10,
20 pp. 3-8.

21 In assessing an acceptable medical source, an ALJ must provide "clear and convincing"
22 reasons for rejecting the uncontradicted opinion of either a treating or examining physician.

²³ *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506

1 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). When a treating or
 2 examining physician's opinion is contradicted, the opinion can be rejected "for specific and
 3 legitimate reasons that are supported by substantial evidence in the record." *Lester*, 81 F.3d at
 4 830-831 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)); *Murray v. Heckler*,
 5 722 F.2d 499, 502 (9th Cir. 1983). The ALJ can accomplish this by "setting out a detailed and
 6 thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation
 7 thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing
 8 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

9 Dr. Walker conducted a psychological evaluation of Plaintiff in February 2016 and
 10 another psychological evaluation in December 2017 using forms from the Washington State
 11 Department of Social and Health Services ("DSHS"). AR 427-430, 659-662. For both
 12 evaluations, Dr. Walker conducted a clinical interview and mental status examination ("MSE")
 13 of Plaintiff, made diagnoses, and opined to several moderate and marked limitations in check-
 14 the-box form. AR 427-430, 659-662. For example, Dr. Walker opined Plaintiff would have
 15 marked limitations in completing a normal work day and work week without symptoms from
 16 psychologically based symptoms and in learning new tasks. AR 429, 661. Dr. Walker diagnosed
 17 Plaintiff with panic disorder and depression in February 2016, and with panic disorder,
 18 depression, and PTSD in December 2017. AR 428, 660.

19 The ALJ provided little weight to Dr. Walker's opinion, because:

20 (1) Dr. Walker did not offer any objective findings to accompany her notes and
 21 support her assessment. (2) Additionally, some of what the claimant told Dr.
 22 Walker, including not seeing friends or leaving the home, was related to an abusive
 23 partner and not due to her mental health. The claimant later reported having friends,
 24 navigating issues involved living [sic] in a shelter, and having some relationships
 with family. (3) A separate mental health professional assessed the claimant as
 cognitively intact.

1 AR 20 (citations omitted) (numbering added).

2 First, the ALJ discounted Dr. Walker's opinion because she did not include any objective
 3 findings in her notes to support her opinion. An ALJ may "permissibly reject[] ... check-off
 4 reports that [do] not contain any explanation of the bases of their conclusions." *Molina v.*
 5 *Astrue*, 674 F.3d 1104, 1111-1112 (9th Cir. 2012) (internal quotation marks omitted) (quoting
 6 *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)). But, "opinions in check-box form can be
 7 entitled to substantial weight when adequately supported." *Neff v. Colvin*, 639 Fed. Appx. 459
 8 (9th Cir. 2016) (internal quotation marks omitted) (citing *Garrison v. Colvin*, 759 F.3d 995,
 9 1013 (9th Cir. 2014)).

10 Here, the ALJ's reasoning conflicts with Dr. Walker's opinion. The ALJ concluded Dr.
 11 Walker did not include any support for her opinion when she opined to several moderate and
 12 marked limitations. But Dr. Walker noted Plaintiff's memory, concentration, and insight and
 13 judgment were all not within normal limits. AR 430, 662. Dr. Walker also conducted a clinical
 14 interview and MSE of Plaintiff for each evaluation. AR 427-430, 659-662. In both MSEs, Dr.
 15 Walker found Plaintiff's mood and affect were anxious and depressed. AR 430, 662. Thus, both
 16 assessments were accompanied by objective medical evidence and therefore provided support to
 17 Dr. Walker's opinion. *See Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (clinical
 18 interviews and MSEs are "objective measures" which "cannot be discounted as a self-report").
 19 Accordingly, the ALJ's first reason for discounting Dr. Walker's opinion is not specific and
 20 legitimate and supported by substantial evidence.

21 Second, the ALJ discounted Dr. Walker's opinion because "some of what [Plaintiff] told
 22 Dr. Walker ... was related to an abusive partner and not due to her mental health." AR 20. An ALJ
 23 may discount a doctor's opinion regarding a claimant's mental health impairments if the doctor
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1 opined the claimant's impairments are situational in nature. *See Dow v. Astrue*, 2010 WL 55659 at
 2 *13 (S.D. Cal. Jan. 5, 2010) (affirming the ALJ's decision to reject the opinion of the claimant's
 3 treating physician because the physician's treatment notes "show [the claimant's] depression is
 4 more situational").

5 Here, the ALJ failed to recognize that Dr. Walker still diagnosed Plaintiff with PTSD,
 6 panic disorder, and depression nearly a year after Plaintiff ended her abusive relationship. *See AR*
 7 659-662. Dr. Walker noted Plaintiff was out of her abusive relationship in February 2017 yet still
 8 continued to suffer from "chronic worrying[,] severe panic attacks ... PTSD symptoms including
 9 nightmares, hypervigilance, flashbacks, heightened startle response, intrusive memories of trauma
 10 ... emotional distress with reminders of trauma ... [o]ngoing depression with trouble staying
 11 motivated, feels heartbroken, [and] suicidal ideation at times but plans to harm herself." AR 659.
 12 While Plaintiff's abusive relationship may have contributed to Plaintiff's mental health
 13 impairments, there is no evidence in Dr. Walker's opinion indicating Plaintiff's mental health
 14 impairments are situational. Further, the ALJ is not permitted to selectively rely on certain
 15 observations in the opinion that support her conclusion without considering their context. *Reddick*,
 16 157 F.3d 715 at 722-723. Accordingly, the Court finds the ALJ's second reason for discounting Dr.
 17 Walker's opinion is not specific and legitimate and supported by the record.

18 Third, the ALJ discounted Dr. Walker's opinion because it conflicts with Dr. Karen
 19 Young's opinion. AR 20. The fact that Dr. Walker's opinion contradicts Dr. Young's opinion
 20 simply determines the governing standard for rejecting Dr. Walker's opinion. *See Lester*, 81 F.3d
 21 at 830-831 (citing *Andrews*, 53 F.3d at 1043) (establishing the "specific and legitimate" standard
 22 for physician opinions that are contradicted); *Murray*, 722 F.2d at 502. Here, the ALJ did not
 23 provide any reasoning following her claim that the two opinions are contradictory. Without
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1 providing more analysis, the ALJ’s reasoning is conclusory. *See Hess v. Colvin*, No. 14-8103,
 2 2016 WL 1170875, at *3 (C.D. Cal. Mar. 24, 2016) (an ALJ merely offers her conclusion when
 3 her statement “stands alone, without any supporting facts”). Accordingly, the ALJ’s third reason
 4 for discounting Dr. Walker’s opinion is not specific and legitimate and supported by substantial
 5 evidence. *See Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014)
 6 (citation omitted) (“the ALJ must provide some reasoning in order for [the Court] to meaningfully
 7 determine whether the ALJ’s conclusions were supported by substantial evidence”).

8 For the above stated reasons, the Court finds the ALJ failed to provide specific and
 9 legitimate reasons supported by substantial evidence for discounting Dr. Walker’s opinion. Thus,
 10 the ALJ erred.

11 “[H]armless error principles apply in the Social Security context.” *Molina*, 674 F.3d at
 12 1115. An error is harmless, however, only if it is not prejudicial to the claimant or
 13 “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v. Comm’r, Soc.*
 14 *Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674 F.3d at 1115. The
 15 determination as to whether an error is harmless requires a “case-specific application of
 16 judgment” by the reviewing court, based on an examination of the record made “‘without
 17 regard to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at 1118-
 18 1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

19 Had the ALJ given great weight to Dr. Walker’s opinion, the ALJ may have included
 20 additional limitations in the residual functional capacity (“RFC”). For example, Dr. Walker opined
 21 Plaintiff would have marked limitations in completing a normal work day and work week
 22 without symptoms from psychologically based symptoms. AR 429, 661. In contrast, in the RFC,
 23 the ALJ limited Plaintiff’s absenteeism to “customary tolerances of employer rules regarding
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1 sick leave and absence" and did not include any productivity limitations. *See* AR 18. Therefore,
 2 if Dr. Walker's opinion was given great weight and additional limitations were included in the
 3 RFC and in the hypothetical question posed to the vocational expert ("VE"), the ultimate
 4 disability determination may have changed. Accordingly, the ALJ's errors are not harmless and
 5 require reversal. The ALJ is directed to reassess Dr. Walker's opinion on remand.

6 **II. Whether the ALJ properly evaluated Plaintiff's testimony and the lay
 witness testimony.**

7 Plaintiff contends the ALJ failed to give clear and convincing reasons for rejecting
 8 Plaintiff's testimony about her symptoms and limitations. Dkt. 10, pp. 8-13. Plaintiff also
 9 contends the ALJ failed to provide specific, germane reasons for rejecting the lay witness
 10 testimony. Dkt. 10, pp. 13-14. The Court concludes the ALJ committed harmful error in
 11 assessing Dr. Walker's opinion and must re-evaluate it on remand. *See* Section I, *supra*.
 12 Because Plaintiff will be able to present new evidence and new testimony on remand and
 13 because the ALJ's reconsideration of the medical evidence may impact her assessment of
 14 Plaintiff's subjective testimony and the lay witness testimony, the ALJ must reconsider
 15 Plaintiff's testimony and the lay witness testimony on remand.

16 **III. Whether the ALJ erred at Step Five.**

17 Plaintiff alleges the ALJ erred at Step Five of the sequential evaluation, arguing that the
 18 ALJ failed to identify alternative jobs Plaintiff could perform. Dkt. 10, pp. 14-15. The Court has
 19 directed the ALJ to reassess Dr. Walker's opinion, which may result in additional RFC
 20 limitations. Plaintiff's RFC and the types and number of jobs available at Step Five may change.
 21 As such, the ALJ shall perform a new Step Five analysis based on a re-evaluation of the opinion
 22 evidence. *See Watson v. Astrue*, 2010 WL 4269545, *5 (C.D. Cal. Oct. 22, 2010) (finding the
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1 ALJ's RFC determination and hypothetical questions posed to the VE defective when the ALJ
2 did not properly consider a doctor's findings).

3 CONCLUSION

4 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
5 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and
6 this matter is remanded for further administrative proceedings in accordance with the findings
7 contained herein.

8 Dated this 28th day of April, 2020.

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11 David W. Christel
12 United States Magistrate Judge

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